

**Williams Pipeline Company and Oil, Chemical and Atomic Workers Union Local 5-348, AFL-CIO.**  
Case 17-CA-16778

September 28, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

On July 1, 1994, Administrative Law Judge Elbert D. Gadsden issued the attached decision. The General Counsel filed a limited exception and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exception<sup>1</sup> and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Williams Pipeline Company, Kansas City, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

“(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.”

2. Substitute the attached notice for that of the administrative law judge.

<sup>1</sup>No exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act by denying an employee his rights under *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

<sup>2</sup>We shall modify par. 2(b) of the judge's recommended Order to conform to the Board's standard language. We shall also grant the General Counsel's exception and shall substitute a new notice to delete the last paragraph of the judge's notice and conform the notice to the judge's recommended Order.

**APPENDIX**

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

315 NLRB No. 3

To form, join, or assist any union  
To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the rights guaranteed in Section 7 of the Act by denying your request to be represented by a union representative during an investigatory interview in which you have reason to believe disciplinary action will be taken against you.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WILLIAMS PIPELINE COMPANY**

*Richard Auslander, Esq.*, for the General Counsel.  
*Mark Solano, Esq. (Lester, Bryant, Solano, Pilgram & Ganz)*, of Tulsa, Oklahoma, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

ELBERT D. GADSDEN, Administrative Law Judge. On June 4, 1993, an unfair labor practice charge was filed by Oil, Chemical and Atomic Workers Union Local 5-348, AFL-CIO (the Union or the Charging Party), against Williams Pipeline Company (the Respondent).

A complaint was issued on behalf of the General Counsel by the Regional Director for Region 17, against the Respondent on October 28, 1993. In essence, the complaint alleges that on May 21, 1993, the Respondent denied an employee's request to be represented by the Union during an investigatory interview for which the employee had reasonable cause to believe would have resulted in disciplinary action against him; that on or about May 21, 1993, Respondent conducted the interview even though it had denied the employee's request for union representation during the interview; and that on or about May 21, 1993, Respondent suspended the employee for 3 days as a result of the information it obtained from the employee during the interview; and that such conduct by the Respondent constituted interference with, restraint on, and coercion against the employees' exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

Respondent filed an answer to the complaint on October 29, 1993, admitting that it conducted an investigatory interview but denied it has violated the Act, as alleged.

The hearing in the above matter was held before me on December 13, 1993, in Mission, Kansas. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered along with the entire record.

On the entire record in this case, including my observation of the demeanor of the witnesses and my consideration of the briefs, I make the following

## FINDINGS OF FACT

## I. JURISDICTION

At all times material, Respondent has been a corporation with a facility located at 401 East Donovan, Kansas City, Kansas, where it has been engaged in the operation of an interstate petroleum pipeline business.

During the previous 12 months ending May 31, 1993, Respondent in the course and conduct of its business operations of the petroleum pipeline, derived gross revenues in excess of \$50,000 from the transportation of petroleum in interstate commerce, in the State of Kansas, the State of Oklahoma, and other States.

The complaint alleges, the answer admits, and I find that Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Oil, Chemical and Atomic Workers Union Local 5-348, AFL-CIO (the Union), is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Background Facts*

Respondent is engaged in the transportation of petroleum refined products, including gasoline, diesel, and jet fuels through 7000 miles of underground pipeline in 11 States, to various strategic locations where breakout tanks are located and petroleum is stored, and later pumped or loaded and transported in other directions.

Tim Elbert is the manager of the Kansas City complex, which consists of a terminal and a station. The station side is the receiving and pumping side where the flow of the product is directed. The terminal side is a loading rack where ground transportation comes and loads the product.

At all times material here, the following named individuals held the position set forth opposite their respective names, and are now, and have been at all times here, supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Elbert	Area Manager
Jerry Poplin	Operations Supervisor
John Parrot	Operations Supervisor

The most recent collective-bargaining agreement between the Union and Respondent is effective for the period February 1, 1993, through January 31, 1996, covering approximately 300 employees from Tulsa, Oklahoma, to Grand Forks, North Dakota. The Kansas City facility here involved consists of approximately 20 employees.

## Procedural History of Case

Between the filing of the charge and letter of service on June 4, 1993, and the filing of the complaint here on October 28, 1993, the evolutionary procedural posture of this case is as follows:

In a letter to the parties dated July 9, 1993, the Regional Director for Region 17 advised that based on the investigation of the charge, there was insufficient evidence and proceeding further was unwarranted.

On July 15, 1993, the Union filed a notice of appeal and on July 26, 1993, the General Counsel's Office of Appeals acknowledged receipt of the appeal.

On September 29, 1993, the Office of Appeals sustained the appeal and remanded the charge and Regional ruling to the Regional Director, with the directive that there was a need to develop a record before an administrative law judge. Thereafter, the complaint in the instant matter was issued October 28, 1993.<sup>1</sup>

B. *Investigatory Interview of Employee Resulting in Disciplinary Action Against the Employee*

The simple issue presented for determination in this case is as follows:

Whether the Respondent interfered with, restrained, and coerced its employee, Jimmy Phoenix, by denying his request to be represented by a union agent in an investigatory interview, which he had reasonable cause to believe would result in disciplinary action being taken against him, in violation of Section 8(a)(1) of the Act.

The uncontroverted and credited testimony of record established that Jimmy Phoenix, a lead operator, was in the employ of Respondent for approximately 20 years, including during May 1993. Alfred (Al) Massey has been in Respondent's employ since August 1977, works as a lead operator, and was the only union steward at the Kansas City facility (terminal and station) during May 1993.

During the midnight (12 to 8 a.m.) shift on May 19, 1993, lead operator Jimmy Phoenix was at work. While performing his duties, which included monitoring the contents of tanks (709 and 744) containing petroleum products, one of the gauges on tank 709 became stuck. Phoenix sent operator Teasdale (a knowledgeable operator about gauges) to check the gauge problem. Later, operator Teasdale informed Phoenix that the gauge problem was corrected. Phoenix acknowledged he was aware of a faulty gauge problem when his work shift ended at 8:55 a.m., Wednesday, May 19, 1993.

On that afternoon (May 19) Area Manager Tim Elbert called Phoenix at home and asked him to come to the office to discuss an overfill of tank 709, on which Phoenix had worked that morning. Phoenix told Elbert he could not come to the office that afternoon but he would come in on Thursday, May 20, because he had an engagement and that was his day off. According to Phoenix, Elbert said, "Okay," that he had a meeting on Thursday but he should be back at noon. Phoenix went to the office Thursday, May 20, at 11:45 a.m. and remained until 12:30 p.m. but neither Manager Elbert nor any of the supervisors were there. Manager Elbert's meeting ended at 1 p.m. and when he returned he was informed that Phoenix had been there around 11:30 or 11:45 a.m. Manager Elbert testified he tried calling Phoenix at home that afternoon (May 20) but was unable to reach him.

Phoenix returned to the office Friday, May 21, at 1:35 p.m. as he had promised, and told Supervisor Jerry Poplin he was there to discuss the matter involving the overflow of tank 709. He asked Poplin was any disciplinary action going

<sup>1</sup> The facts set forth above are not in conflict in the record.

to be taken against him. Poplin said he did not know yet, that was the reason they were there for the meeting. Phoenix told Poplin he "would like to have Al Massey here," and said let me go and call him. Poplin testified he suggested that Phoenix call Massey. Phoenix went to the phone and was unable to reach Massey so he returned to the office and stated that he could not reach him. According to Phoenix, Poplin said, "Bill Hayes is here," but Poplin testified Phoenix asked him if Hayes was there, and he said, "[Y]es," and Phoenix said, "Bill will do." However, Phoenix said he said, "I prefer to have Al Massey," and Poplin said, "[B]ut he's not here" and Phoenix said, "I still prefer to have Al Massey, but if I don't have a choice, you know, if I don't have a choice, Bill can hear the conversation, what's going on."

Phoenix continued to testify as follows:

Q. Why did you say that?

A. Well, the reason—what I was thinking, if I walk out and he—he's my boss and I was down there for a reason. If I walk out, I was thinking about that could be insubordination. I didn't want that to occur because I have seen some [inaudible] in the past.

So I say, "I have no choice, you know, you can let Bill hear our conversation." I say—that's what I said.

So Jerry Poplin said, "I'll go get him." So Jerry went and got him and we proceeded to his office.

Q. Alright. Who was in the office when you went in there?

A. There was Tim and—at this time a little nervous, you know. Jerry and Bill Hayes sitting against the wall. But I stated this question. After we sat down, I stated this question, "Are any disciplinary action going to be taken?"

Tim said, "It all depends on two things, two things or two words."

I said, "I still prefer to have Al," and I told Bill Hayes that I want you to hear my conversation.

#### Credibility of Phoenix and Poplin

According to the testimony of Manager Tim Elbert, as he entered his office on May 21, he overheard Phoenix ask Supervisor Poplin "was Bill Hayes there" and Poplin said, "[Y]es, Bill's here," and Phoenix said, "[H]e'll do," and Poplin went and brought Hayes to the office. Phoenix denied he ever said Bill Hayes "will do."

Supervisor Jerry Poplin corroborated Phoenix's account that while waiting for Manager Elbert to arrive, Phoenix asked was disciplinary action going to be taken against him, and he told Phoenix he did not know, the Company had to hear his side of the story; that Phoenix then asked was Al Massey around and he replied, "No Al's not here, he's not on this shift." Phoenix went out of the office to call Massey and when he returned to the office, he asked Poplin "was Bill Hayes there." . . . "Bill Hayes will do," so Poplin went and got Hayes. Poplin said he told Hayes we need you, Phoenix needs union representation and he picked (selected) you.

Although Supervisor Poplin's testimony tends to connote that it was Phoenix who asked for lead operator Bill Hayes after Poplin informed Phoenix that Union Steward Al

Massey was not there, the evidence is clear that Poplin heard and understood Phoenix's request for the presence of Union Steward Massey to represent him at the investigatory interview with Manager Elbert. It is equally clear from the record that although Phoenix asked Poplin was Bill Hayes there, after he had been informed by Poplin that Massey was not there, that Phoenix's inquiry of Hayes did not imply that he desired Hayes to represent him or that he meant he was interested in the presence of Hayes as his union representative.

In fact, the record clearly shows that Phoenix made it clear to Poplin that he preferred Al Massey as his representative, but if he did not have a choice in the matter he wanted the presence of Hayes to hear the conversation. Phoenix's question as to whether he had a choice to have Steward Massey represent him was reasonable, since Supervisor Poplin did not at any time tell him he could arrange for another time to have Massey represent him. Instead, Poplin simply and undeniably said, "[B]ut Massey is not here," as if the interview had to proceed at that time without Massey. When Phoenix asked was Bill Hayes there, Poplin said, "[Y]es." Phoenix knew that Hayes was not a union steward and there is nothing in the record to indicate that his inquiry of Hayes was for the purpose of Hayes representing him. As the evidence later shows, Phoenix's initial inquiry of Hayes and his later consent for the presence of Hayes at the interview, was simply for Hayes to witness what was said during the interview.

Based on the foregoing analysis of the record evidence, reasons, as well as my observation of the demeanor of Phoenix and Poplin, I was persuaded that it was Poplin, not Phoenix, who said Hayes "will do," suggesting or implying he would do as a union representative for Phoenix at the investigatory interview. I therefore credit Phoenix's account and discredit Poplin's account that it was Phoenix who said Hayes "will do."

William Hayes, a lead operator, was employed by Respondent about 26 years and currently works under the supervision of Bob Miller. He is a member of the Union but was not a steward in May 1993.

Hayes testified that on the afternoon of May 21, 1993, Supervisor Jerry Poplin approached him and asked him to accompany him to the terminal office. He asked why, and Poplin told him Jim Phoenix had come in to discuss the incident involving tank 709 and they need somebody to be present, or rather, Jim Phoenix needed somebody or something like that. Hayes asked Poplin where was Steward Al Massey and why they did not get him. Poplin said Massey "was not available, you will do," and further stated, "you're a steward, aren't you?" Hayes said he replied no, but I had been a steward in the past (prior to 1977); and *Poplin said Phoenix said you will do. Poplin was pretty insistent and asked him to come with him and just sit in there and be a witness.*

Hayes accompanied Poplin to Superintendent Elbert's office where Phoenix was sitting in the other room. Hayes asked Elbert about Massey, stating Massey should be present, not him. Thereafter, they went into the other room and he heard Phoenix ask Elbert on two occasions would he be disciplined. There was no answer, except Elbert said that is why we are here—that is the purpose of the meeting.

It is particularly noted that Manager Elbert corroborated Supervisor Poplin's testimony that he overheard Phoenix ask Supervisor Poplin was Bill Hayes there, and when Poplin

said, “[Y]es,” Phoenix said, “[H]e’ll do.” After Poplin got Hayes, Elbert acknowledged Phoenix first asked for Steward Massey, and when he informed Phoenix that Massey was not there, Phoenix asked was Bill Hayes there—and Elbert said, “[Y]es,” and Phoenix said, “[H]e will do.” However, it is noted that Elbert tried to embellish Poplin’s account by adding, that Poplin told Hayes we need you, “*Phoenix needs union representation and he picked you.*” Even Poplin did not testify that he told Hayes “Phoenix needs union representation and he [Phoenix] picked you [Hayes].”

More significantly, Hayes testified that when he told Poplin he was not a union steward, Poplin said, “[Y]ou will do;” that Poplin was pretty insistent and asked him to just sit in on the interview.

Based on the foregoing analysis of the record testimony of Manager Tim Elbert and employee Bill Hayes, as well as the demeanor of all witnesses, I credit Bill Hayes’ account and discredit Manager Elbert’s account because Elbert not only tried to corroborate the discredited account of Supervisor Poplin, but also attempted to expand upon it by stating that Poplin told Hayes they “needed him, he would do . . . that Phoenix need union representation and he picked you” (Hayes). Again, it is particularly noted that it was Poplin, and not Elbert who told Bill Hayes, he would do, implying or suggesting he would do as a union representative for Phoenix, in the face of Phoenix’s explicit request for Steward Massey to represent him at the investigatory interview.

It is clear from the record, that it was only in the absence of Steward Massey, that Phoenix wanted Bill Hayes to sit in as a witness. At no time did I receive the understanding from this record that Phoenix wanted the presence of Hayes for any purpose other than to witness what would be said in the interview.

Although Supervisor Poplin testified he never suggested that Phoenix should use Bill Hayes as his representative, and he never verbally denied Phoenix’s request for Massey to represent him, I nevertheless find on the credited evidence that Poplin and Elbert both suggested and implied that Bill Hayes could and should be his representative. I discredit Poplin’s inconsistent denial that he did not hear Phoenix request or state he preferred the presence of Steward Massey at the interview.

Consequently, I further find on the credited testimony, that Phoenix never consented to or substituted Bill Hayes for the presence of Massey, as his union representative at the investigatory interview with Manager Elbert. This conclusion is especially true since Respondent (Elbert and Poplin) gave Phoenix the well-founded impression that he had to go forward with the interview at that time, without the presence of Union Steward Massey as his representative.

#### The Investigatory Interview

During the meeting on May 21, Manager Elbert asked Phoenix what happened. Phoenix said he read or checked the gauge at 2, 4, and 6 o’clock, and noted it was the same. He told operator Teasdale he needed that tank line checked, the gauge on 709, and Teasdale said okay. After Teasdale checked the gauge, Phoenix said he noticed it went down between 6:35 and 7 a.m., and Teasdale said it was “okay”—“it’s working Jim.” Phoenix said the tank alarm did not go off and he depended on the man with the hand line (Teasdale) and the alarm. Thereafter, he said he went on perform-

ing his other duties until the shift ended. At the conclusion of the investigatory interview concerning the tank overflow, Manager Elbert suspended Phoenix for 3 days, pending the results of the investigation because he said Elbert was on the 72-hour timeclock limitation.

#### Conversations and Meeting Between Manager Tim Elbert and Steward Alfred Massey

Alfred Massey, lead operator, has been in Respondent’s employ since 1977 and works under the supervision of Bob Miller. Massey testified he worked at night and got off at 7:45 a.m., May 21, 1993. That afternoon he received a call from lead operator, Jim Phoenix, who told him he was approached by Manager Elbert and asked to meet with him about an incident in which he was involved. Phoenix told him he had asked Manager Elbert would there be any discipline resulting from the meeting and Elbert told him there could be, depending on what Phoenix had to say. Phoenix said he asked Elbert could Al Massey be present as his union representative and Elbert told him he believed Massey was unavailable, but Phoenix can call Massey if he desired to do so. Phoenix told him he tried unsuccessfully to contact Massey by telephone. Phoenix said he nonetheless attended the investigatory interview. Present at the interview were Manager Tim Elbert, Supervisor Jerry Poplin, and lead operator Bill Hayes, who sat in on the interview. Massey said he told Phoenix he would look into the matter and get back to him.

On the next morning, May 23, 1993, Massey visited the office of Manager Tim Elbert and asked him had he scheduled a meeting with Jim Phoenix. Elbert said, “[Y]es.” Massey asked Elbert did he tell Phoenix there would be disciplinary action at the meeting. Elbert said he told Phoenix there could be, disciplinary action depending on what Phoenix had to say. Massey asked Elbert if he thought Massey should have been there and Elbert said he did not know. Massey told Elbert that by his calling Bill Hayes to the meeting Elbert was trying to use Hayes as a union steward in violation of the labor law. Near the end of the meeting, Massey said he asked Elbert to revoke Phoenix’s suspension and clear his record. Elbert said he could not make that decision but he would get back to him or leave a message for him.

When Massey contacted the Company the next day (May 24) about Phoenix’s suspension, he was informed that the Company was treating the reason for the suspension and the question about whether Phoenix’s *Weingarten* right had been violated as different issues. Massey told the Company (Elbert) it could not select the steward for the Union because Massey was elected steward by the Union.

#### Analysis and Conclusions

In *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), the Supreme Court held that an employee who is being subjected to an investigatory interview has the right to request the union representative. When the employee makes such a request, the employer must either grant the request, or advise the employee it (employer) will not proceed with the interview unless the employee is willing to go on with the interview without a union representative.

In applying the *Weingarten* ruling with respect to the unavailability of a requested union representative by an em-

ployee, the Board has held that although *Weingarten* does not indicate that an Employer must postpone an investigatory interview with its employees because a particular union representative is unavailable for personal or other reasons, when another union representative is available and could have been requested by the employee. *Coca-Cola Bottling Co. of Los Angeles*, 227 NLRB 1276 (1977).

In the instant case however, Steward Al Massey was the only union representative at Respondent's facility, and he was unavailable and could not be reached by telephone on May 21, 1993, the day Respondent scheduled the interview. Since Massey was the only steward at Respondent's Kansas City facility and the only steward whose presence Phoenix could have requested, the facts in *Coca-Cola Bottling*, supra, are distinguishable from and not applicable to the facts in the instant case. *Safeway Stores*, 303 NLRB, 989, 995-996 (1991).

In fact, Phoenix's request for Union Steward Massey was clearly and undeniably made to Manager Tim Elbert and Supervisor Jerry Poplin. Supervisor Poplin and Manager Elbert informed employee Phoenix that Steward Al Massey was not there. After Phoenix was informed that Steward Massey was not there, he then asked was Bill Hayes (employee union member) there.

The record evidence is uncontroverted that in response to Phoenix's question about discipline on May 21, both Supervisor Poplin and Manager Elbert told Phoenix, whether he would be subjected to disciplinary action because of the overflow of tank 709, depended on what was learned during the scheduled investigatory interview that day. Thus, Phoenix had ample reason to believe he could or would be subjected to disciplinary action because of the above answer of the Respondent and the overflow of the tank on which he last worked.

Although Phoenix had requested and informed Supervisor Poplin and Manager Elbert he wanted and preferred the presence of Steward Massey at the investigatory interview on May 21, the evidence of record fails to show that either Poplin or Elbert ever advised Phoenix that the Company would not proceed with the interview unless Phoenix was willing to go forward with the interview without Union Representative Massey. *Weingarten*, supra.

It is true, as Respondent argues, that Respondent did not ever verbally deny Phoenix's request for union representation at the investigatory interview. However, the evidence nevertheless fails to demonstrate that Respondent (Elbert or Poplin) ever affirmatively granted (verbally or by action) or advised (expressly) Phoenix that the company would not proceed with the interview unless Phoenix was willing to go forward with the interview unrepresented, as *Weingarten* requires an Employer to do. *Weingarten*, supra.

Instead of explicitly (expressly or actually) granting Phoenix's request to be represented by Steward Massey, or expressly advising him that the Company would not proceed with the interview unless Phoenix was willing to proceed unrepresented by Steward Massey, Manager Elbert and Supervisor Poplin merely quickly agreed to Phoenix's unwilling request for the presence of fellow employee Bill Hayes as a witness to the interview.

At the hearing in this case, both Elbert and Poplin tried to give the impression that Phoenix was willing to substitute Hayes for Massey as his representative. However, the cred-

ited evidence shows that Phoenix unwillingly elected to go forward with Hayes as a witness because he did not feel he had the freedom not to proceed without Steward Massey. Phoenix's feeling of being constrained to go forward with the interview unrepresented by Massey is obviously, the very reason why *Weingarten* requires the employer to advise the requesting employee that the employer will not proceed with the interview unless the employee is willing to proceed unrepresented by the union. Since neither Elbert nor Poplin so advised Phoenix, it is reasonable and understandable why Phoenix felt constrained (unwilling) to proceed without Steward Massey, who was unavailable at the time of the interview.

Additionally, an employee's "right to representation" in an investigatory interview is an employees' right to a representative who is an agent of the labor organization—which is the exclusive representative of the employees. *Sears, Roebuck & Co.*, 274 NLRB 230 (1985); *T.N.T. Red Star Express*, 299 NLRB 894, 898 fn. 12 (1990); *NLRB v. J. Weingarten*, supra. In the instant case, it is without dispute that employee Bill Hayes was not a steward or an agent of the Union in May 1993, when he sat in on Phoenix's investigatory interview as a witness. By Phoenix's consenting to Hayes' presence in the interview did not transform Hayes into a union agent or representative. Nor did Hayes' presence constitute a waiver by Phoenix of his right to union representation at the interview. See *Southwestern Bell Telephone Co.*, 227 NLRB 1223 (1977). Also in *Super Valu Stores*, 236 NLRB 1581, 1591 (1978), the administrative law judge with Board approval, described an employer's objections, in a *Weingarten* situation, when a union representative is not available by stating:

In this circumstance, the employer had the choice of giving the employee time or a postponement to obtain the representation or as the Supreme Court pointed out in *Weingarten* . . . of advis[ing] the employee that it will not proceed with the interview unless the employee is willing to enter the interview unaccompanied by his representative.

With respect to an employee going forward with the interview without the requested union representation, the administrative law judge further stated:

The fact that [the employee] stayed, and answered the questions put to him, did not make his participation voluntary or constitute a waiver of his right to union representation. It should not be a requisite of union representation that the lone employee further antagonize the employer and jeopardize his job by walking out of the meeting or refusing to answer questions. [Id.]

At the hearing here, Phoenix credibly and convincingly explained why he did not walk out of the meeting because Steward Massey was unavailable. The record shows that Respondent did nothing to make him feel welcome to walk out or to request a postponement of the interview until Steward Massey was available. Instead Respondent suggested and acquiesced in Hayes being present at the interview, as though Hayes was representing Phoenix. Under such circumstances I do not find that because Phoenix felt constrained to go forward with the interview without Steward Massey, meant that

he voluntarily went forward, or that his going forward constituted a waiver of his right to union representation. *Super Valu Stores*, supra.

Consequently, based on the foregoing findings and cited legal authority, I conclude and find that Phoenix went forward with the investigatory interview without the presence of Steward Massey, and without Respondent having advised him that the Company would not proceed with the interview unless Phoenix was willing to go forward unrepresented by the Union. I further find that such conduct by the Respondent constituted an interference with, a restraint on, and coercion against the exercise of employee's Section 7 rights, in violation of Section 8(a)(1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in close connection with its operations as described in section I, above, have a close, intimate, and substantial effect on trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent denied an employee's request to be represented by a union representative during an investigatory interview, in which the employee had reason to believe disciplinary action would be, and in fact was taken against him, and that by so denying, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act, I order that Respondent cease and desist from engaging in such unlawful conduct, and that it take certain affirmative action to effectuate the purposes of the Act.

Because of the character of the unfair labor practice here found, the recommended Order will provide that Respondent cease and desist from engaging in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact, and on the entire record in this case, I make the following

#### CONCLUSIONS OF LAW

1. Williams Pipeline Company, the Respondent, is and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By denying its employee's request to be represented by a union representative during an investigatory interview, in

which the employee had reason to believe disciplinary would be, and was in fact, taken against him, Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights protected by Section 7, in violation of Section 8(a)(1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, Williams Pipeline Company, Kansas City, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying employees' request to be represented by a union representative during an investigatory interview, in which employees have reason to believe disciplinary action would be, or is in fact, taken against them, thereby interfering with, restraining, and coercing them in the exercise of their right guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at Respondent's facility at 401 East Donovan, Kansas City, Kansas 66115, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>3</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."